

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,)
)
 v.)
)
ANZARA M. BROWN,)
(ID. No. 1205025968))
)
 Defendant.)

Submitted: April 5, 2013

Decided: July 30, 2013

Nicole S. Hartman, Esq., Department of Justice, Dover, Delaware. Attorney for the State.

Sandra W. Dean, Esq., Camden, Delaware. Attorney for the Defendant.

Upon Consideration of Defendant's

Motion to Suppress

DENIED

VAUGHN, President Judge

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OPINION

This case is part of a large investigation into an alleged drug organization. As part of the investigation, the police wiretapped telephones of Galen Brooks pursuant to a wiretap warrant. On May 31, 2012, an unknown male allegedly set up a drug transaction with Brooks over the phone. The transaction was to take place at Brooks' residence in Dover. At 5:35 p.m., the unknown male called and informed Brooks that he would arrive at Brooks' house in approximately seven minutes. At 5:51, the police saw a male and female arrive at Brooks' house and leave six minutes later. The police stopped the vehicle after it left Brooks' house. The male occupant was the defendant, Anzara Brown. The police searched his person and found illegal drugs in his possession. Brown now moves to suppress the drugs that were found by the police on the ground that probable cause did not exist to justify stopping Brown's vehicle and searching his person.

FACTS

On May 31, 2012, Sergeant Lance Skinner of the Delaware State Police was listening to the telephone calls of Galen Brooks in real time through a wiretap. During that afternoon, Brooks spoke with a person named "Trell" over the phone on four separate occasions. The first phone conversation occurred at 3:13 p.m. At the time, the police were familiar with Brooks and his telephone number, but did not know the identity of the other caller. Over the course of the four phone conversations, Sergeant Skinner learned that Brooks was going to sell Trell certain amounts of cocaine and crack cocaine at Brooks' residence later that day. The last

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phone call made by Trell occurred at 5:35 p.m. In that call, Trell informed Brooks that he would be arriving at Brooks' residence in seven minutes. Sergeant Skinner then passed this information onto several detectives who were at that time conducting surveillance of Brooks' house. Sergeant Skinner then left the location where he was listening to the phone calls and headed to Brooks' residence to be prepared to participate in a possible arrest.

Detective Jordan Miller of the Dover Police Department was conducting the surveillance of Brooks' residence through a video camera. The video shows that at 5:48 p.m. a man who the police knew to be John Price left Brooks' residence. The police were already familiar with Price and the phone numbers that he used based on their investigation. At 5:51 p.m., a male (later identified as Brown) and a female pulled into Brooks' driveway in a large green van. The male and female then went to the side of the house where the camera lost sight of them. After a few minutes, the two came around to the front of the house. Brooks then came out of his residence and made contact with Brown and the female, and all three of them went to the side of the house where the camera lost sight of them again. At 5:57 p.m., Brown and the female got back into the green van and drove away. One minute later, Brooks got into his vehicle and drove away from his home. This information was relayed by Detective Miller to Sergeant Skinner, who was en route to Brooks' residence.

Based on the above-mentioned telephone conversations and the appearance of the male and female at Brooks' residence, Sergeant Skinner concluded that probable cause existed to arrest the unknown male who had just left Brooks' residence on drug

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charges. As Sergeant Skinner was arriving at the entrance of Brooks' neighborhood, he saw the green van leaving the neighborhood. He followed it for a few miles and then pulled it over. Sergeant Skinner told Brown that the registration sticker on the vehicle was expired and asked Brown to step out of the van to look at the tag. When Brown stepped out of his vehicle, Sergeant Skinner arrested him and searched his person, finding illegal drugs. At the suppression hearing, Sergeant Skinner admitted that Brown's vehicle tag was properly registered, but that he told Brown that it was not in order to separate Brown from the other occupant and get him out of the vehicle.

CONTENTIONS

Brown contends that there was no probable cause to arrest him and that the drugs should be suppressed, because the identity of the caller setting up the drug transaction with Brooks was unknown to the police at the time of Brown's arrest, and the police did not see a drug transaction take place during their surveillance. Brown further contends that the caller could have been John Price, because, as Sergeant Skinner testified at the hearing, most drug dealers use more than one phone to avoid detection by the police, and Price and Brown were spotted at Brooks' residence within minutes of each other.

The State contends that there was probable cause to arrest Brown before the vehicle was stopped because Brooks clearly discussed the sale of drugs over the phone with an unknown male and the police reasonably inferred that the unknown male was Brown, because he arrived at Brooks' residence close to the time that the caller said he would arrive to pick up the drugs. The State further contends that the

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police reasonably ruled out Price as the buyer, because the police were aware of the numbers of the phones being used by Price and were aware that the number for the phone being used by the unknown caller was not one of Price's.

DISCUSSION

Police officers may arrest individuals if the officer has probable cause to believe that the individual has committed a crime.¹ To establish probable cause, the police need only present facts suggesting that a fair probability exists that the defendant has committed a crime.² The court determines probable cause based on the totality of the circumstances, as viewed by a reasonable police officer in the light of his or her training and experience.³ “A finding of probable cause does not require the police to uncover information sufficient to prove a suspect's guilt beyond a reasonable doubt or even to prove that guilt is more likely than not.”⁴

Based on the totality of the circumstances, I find that a fair probability existed that Brown purchased cocaine and crack cocaine at Brooks' house, and that when he departed probable cause existed to believe he was then in possession of the drugs just purchased. Here, Brooks and the unknown male caller discussed a drug transaction over the phone in several calls and planned for it to occur at Brooks' residence shortly after the last call. Brown then did in fact arrive at Brooks' residence shortly, that is

¹ *Stafford v. State*, 59 A.3d 1223, 1228 (Del. 2012).

² *Jarvis v. State*, 600 A.2d 38, 42-43 (Del. 1991).

³ *Miller v. State*, 4 A.3d 371, 373 (Del. 2010).

⁴ *State v. Maxwell*, 624 A.2d 926, 930 (Del. 1993) (citing *Jarvis*, 600 A.2d at 43).

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16 minutes, after the last call. The caller had given his estimated time of arrival as seven minutes, but I do not find the difference between seven minutes and 16 minutes to be significant. Given the timing of his arrival, it was reasonable for the police to infer that the unknown caller was Brown, and that, based on the content of the prior phone conversations, Brown and Brooks engaged in a drug deal when they disappeared around the side of Brooks' house for only a few minutes.

This Court has previously concluded that where parties plan a drug transaction in intercepted telephone conversations, and then meet as planned in the conversations, probable cause exists to believe that the meeting is to complete the transaction as planned.⁵

In reaching this conclusion, I also find that it was reasonable for the police to rule out Price, the only other male at Brooks' residence at or about the time of the planned transaction, as the unknown caller. The police were familiar with Price and the numbers of the telephones he used, and were aware that the unknown caller was not using one of Price's telephones. The portion of the tape played at the hearing does not indicate when Price arrived at Brooks' residence. He departed shortly before Brown's arrival. Although it can be argued that the unknown caller might have been Price using a new telephone with a number not previously known to the police, I find that the police acted reasonably in inferring that the unknown caller was not Price based upon their knowledge of his telephone numbers, and was instead someone else.

⁵ *State v. Lum*, 1978 WL 187981 (Del. Superior Ct. Nov. 22, 1978).

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CONCLUSION

For the foregoing reasons, I find that the search was incidental to a lawful arrest. The defendant's Motion to Suppress is *denied*.

IT IS SO ORDERED.

President Judge

oc: Prothonotary

cc: File